

**City of Newport Beach
Police Department**

Memorandum

February 15, 2011

TO: Fern Nueno, Assistant Planner

FROM: Detective Bryan Moore

SUBJECT: Dry Dock Restaurant, 2601 West Coast Highway, Use Permit No. UP2011-001 (PA2011-005).

At your request, the Police Department has reviewed the project application for *Dry Dock*, located at 2601 West Coast Highway, Newport Beach. Per the project description, the applicant is requesting a use permit application for a food service restaurant with late hours, live entertainment, alcohol sales, and an emphasis on nighttime deliveries. The proposed hours of operation for dining are 11:00 a.m. to 2:00 a.m., daily. The proposed hours of operation for the food delivery are 5:00 p.m. to 1:30 a.m., daily. The application also includes a request for a parking management plan to address off-site parking, valet, and an adjustment to the off-street parking requirements. The applicant proposes to secure 20 parking spaces in an off-site lot located at Tustin Avenue and Avon Street, and to provide valet parking beginning at 6:00 p.m.

The applicant will apply for a Type 47 (General – Eating Place) license with the Department of Alcoholic Beverage Control. The license will be conditioned appropriately to protect the health, safety and welfare of the community.

This new location is within an area where the number of crimes is above the City-wide reporting district average. Additionally, this location is within an RD that is over the Orange County per capita of ABC licenses.

Applicant History

The applicant, Jeff Reuter, has been a resident of the City of Newport Beach for the past 58 years. He has been involved in the restaurant business, either as a manager or owner, for approximately 40 years. He is currently the owner of 3-Thirty-3 Waterfront which has been operating on Bayside Drive since 2004.

Mr. Reuter's vision for the Dry Dock restaurant is to bring back the taste of barbeque to the Mariner's Mile district of Newport Beach. In addition, he would like to provide late night delivery of high quality meals to the residents of the City.

The restaurant itself will be indicative of an upscale dining establishment with a fixed bar and 1-2 televisions, which will add to the overall ambiance. Mr. Reuter would also like to provide live entertainment (e.g. three piece band) on Saturdays and Sundays between the hours of 3 p.m. and 7 p.m. According to Mr. Reuter, there will be no live entertainment provided at any other time.

It should also be noted that Mr. Reuter intends on utilizing the docks to the rear of the establishment for take-out service. He has indicated that he has no desire to serve / sale alcoholic beverages from docking area.

Recommendations

The Police Department has no objection to the operation as described by the applicant.

It should be noted that the proposed operation will offer alcoholic beverage service (for on-site consumption) in combination with food service, late hours, and live entertainment. As a result, the applicant/operator will be subject an Operator's Permit issued by the Chief of Police.

Signs and Displays

Any signs or displays would need to conform to City requirements. There shall be no exterior advertising or signs of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs, which are clearly visible to the exterior, shall constitute a violation of this condition.

Hours of Operation

The proposed hours of operation for dining are 11:00 a.m. to 2:00 a.m., daily.

Security

The applicant shall provide licensed security personnel (a minimum of 1 per 50 patrons) while offering live entertainment. A comprehensive security plan for the permitted uses shall be submitted for review and approval by the Newport Beach Police Department.

The procedures included in the plan and any recommendations made by the Police Department shall be implemented and adhered to for the life of the use permit.

Employee Training

Require all owners, managers, and employees selling alcoholic beverages to undergo and successfully complete a certified training program in responsible methods and skills for serving and selling alcoholic beverages.

Additional Comments

For the purposes of this application, staff may also want to consider establishing conditions that would require a special event permit. A special event permit may be required for any event or promotional activity outside the normal operational characteristics of the proposed operation.

For example, events likely to attract large crowds, events for which an admission fee is charged, events that include any form of contract promoters, or any other activities as specified in the Newport Beach Municipal Code to require such permits.

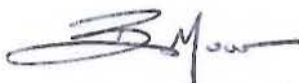
Other Recommended Conditions

In addition, the Police Department has determined that the following conditions would be appropriate for the Conditional Use Permit for the business:

1. Approval does not permit Dry Dock to operate as a bar, tavern, cocktail lounge or nightclub as defined by the Municipal Code, unless the Planning Commission first approves a use permit.
2. Full menu food service shall be available for ordering at all times that the restaurant establishment is open for business.
3. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
4. No "happy hour" type of reduced price alcoholic beverage promotion shall be allowed except when served in conjunction with food ordered from the full service menu.
5. VIP passes or other passes to enter the establishment, as well as door charges, cover charges, or any other form of admission charge, including minimum drink order or sale of drinks is prohibited.
6. The use of private (enclosed) "VIP" rooms or any other temporary or permanent enclosures separate from public areas are prohibited.
7. Petitioner shall not share any profits or pay any percentage or commission to a promoter or any other person based upon monies collected as a door charge, cover charge, or any other form of admission charge, including minimum drink orders or the sale of drinks.

8. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records, which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. These records shall be kept no less frequently than on a quarterly basis and shall be made available to the Police Department on demand.
9. There shall be no on-site radio, television, video, film or other electronic media broadcasts, including recordings to be broadcasted at a later time, which include the service of alcoholic beverages, without first obtaining an approved special event permit issued by the City of Newport Beach.
10. There shall be no live entertainment allowed on the premises without first obtaining a permit from the City.
11. Noise from the live entertainment shall be confined to the interior of the structure.
12. There shall be no dancing allowed on the premises.
13. Strict adherence to maximum occupancy limits is required.
14. No games or contests requiring or involving the consumption of alcoholic beverages shall be permitted.

If you have any questions, please contact Detective Bryan Moore at (949) 644-3725.



Bryan Moore, ABC Liaison
Detective Division



Craig Fox, Captain
Detective Division Commander

Burns, Marlene

From: Nueno, Fern
Sent: Thursday, June 09, 2011 8:28 AM
To: Burns, Marlene
Subject: FW: planning commission agenda for Josh Slocums
Attachments: CCE06082011_00000.pdf

Fern Nueno, [LEED AP](#)
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City of Newport Beach | Community Development Department | 3300 Newport Blvd | Newport Beach, CA 92663
A responsive, knowledgeable team of professionals guiding community development in the public interest.

From: Sue Harvey-Reese [\[mailto:suereese@fea.net\]](mailto:suereese@fea.net)
Sent: Wednesday, June 08, 2011 6:32 PM
To: Nueno, Fern
Subject: FW: planning commission agenda for Josh Slocums

We are concerned about the potential noise and parking for this proposal.

Sue Harvey Reese
2216 Cliff Drive
Newport Beach, CA 92663

949-645-9560 - home
949-878-6158 - cell

**CITY OF NEWPORT BEACH
PLANNING COMMISSION STAFF REPORT**

June 9, 2011 Meeting

Agenda Item 3

SUBJECT: Dry Dock Restaurant - PA2011-005
2601 West Coast Highway
Conditional Conditional Use Permit No. UP2011-001

APPLICANT: G.E.P. Enterprise Group

PLANNER: Fern Nueno, Assistant Planner
(949) 644-3227, fnueno@newportbeachca.gov

PROJECT SUMMARY

A conditional use permit application for a food service restaurant with late hours, live entertainment, alcohol sales, outdoor dining, and delivery. The application also includes a request for a parking management plan to address off-site parking, valet, and an adjustment to the off-street parking requirements. The proposed hours of operation for dining and delivery are 11:00 a.m. to 2:00 a.m., daily.

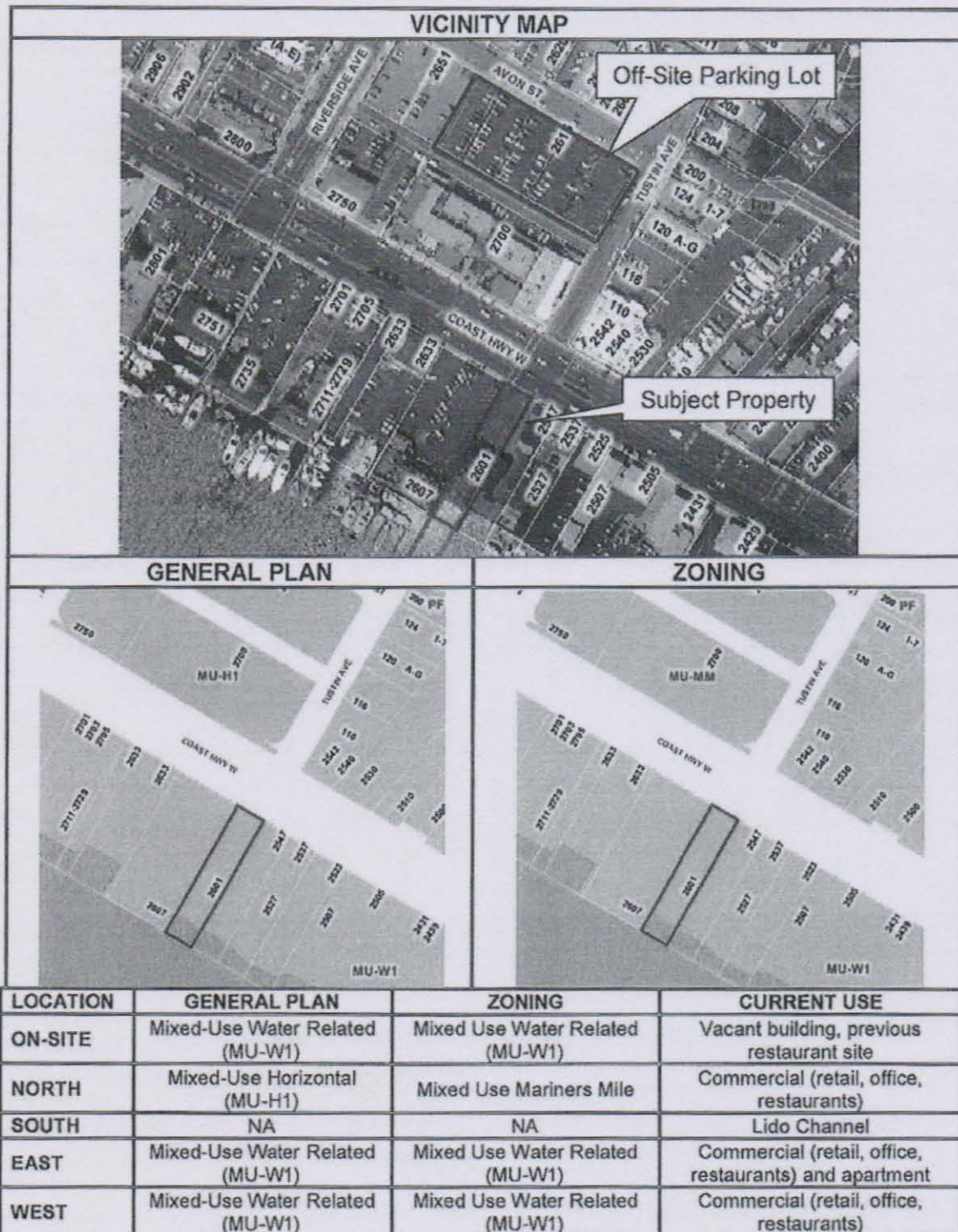
RECOMMENDATION

- 1) Conduct a public hearing; and
- 2) Adopt Resolution No. ____ approving Conditional Use Permit No. UP2011-001 No. (Attachment No. PC 1).

INTRODUCTION

Project Setting

The subject property is located on the south side of Coast Highway, directly across from Tustin Avenue, within Mariner's Mile. The property is approximately 11,949 square feet in area (50 feet wide by 240 feet deep), including a small portion that is submerged. The lot is developed with a 3,987 square foot single-story commercial restaurant building, a surface parking lot with twelve (12) parking spaces, and a boat slip. Mariners' Mile is a mixed-use area developed with primarily commercial and marine uses.



Project Description

The applicant requests a conditional use permit for a food service restaurant with late hours, live entertainment, alcohol sales, and outdoor dining. The applicant proposes to provide high quality barbeque for sit-down meal service and delivery. The proposed hours of operation are 11:00 a.m. to 2:00 a.m., daily. Delivery is proposed during the same hours that the restaurant is in operation. Live entertainment is proposed on Saturdays and Sundays from 2:00 p.m. to 7:00 p.m. Dancing is not requested. The applicant is requesting a Type 47 (beer, wine, distilled spirits) Alcoholic Beverage Control (ABC) License, which is for on-sale general eating place.

Limit request

The application also includes a request for a parking management plan to address off-site parking, valet, and an adjustment to the off-street parking requirements. The applicant proposes to secure 20 parking spaces in an off-site lot located at Tustin Avenue and Avon Street and to provide valet parking beginning at 6:00 p.m., daily. The Zoning Code requires one (1) parking space for every 30-50 square feet of net public area, so the requirement is between 35 and 58 parking spaces. Therefore, there will be a deficiency of between 3 and 26 parking spaces.

The applicant proposes some interior alterations to the restaurant, primarily in the kitchen area. The bar and seating areas will remain generally the same as when the building was operated as Josh Slocum's. The existing building is 3,987 square feet in gross floor area, with 1719 square feet of net public (seating and customer) area and it accommodates approximately 80 seats. The addition of a waiting area/outdoor patio is requested outside of the main entrance facing the parking lot. This outdoor dining area will be 25 percent or less of the interior net public area.

Background

The existing restaurant was originally established in 1968, prior to the requirement of a use permit for eating and drinking establishments. The site was zoned C-O-Z (Limited Commercial) which permitted restaurants provided that they met the parking requirement of one space for every three seats. At that time, the site had a total of 22 on-site parking spaces to accommodate a 66-fixed seat restaurant. Subsequently, various owners/operators have increased the seating and applied for six (6) off-site parking agreements over the years.

On October 23, 1986, the Planning Commission granted Use Permit No. UP3239 authorizing the expansion in the hours of operation of the restaurant permitting it to open at 11:00 a.m. However, in 1989, staff documented the fact that the restaurant never took advantage of the increased hours of operation, and pursuant to the conditions of approval and the Municipal Code, the Use Permit became void 24 months after its approval. The existing restaurant, thereby, had a nonconforming right to operate as a restaurant subject to the operational characteristics and restrictions of a previous off-site parking agreement because the 1986 Use Permit was void.

In 2001, the restaurant began changing its business operations by providing live music and dancing after dining hours. Table and chairs were cleared from the main dining room creating a dancing area for patrons. Recorded music was played by disc jockeys and live bands performed on weekends. The Police Department documented on several occasions that live bands have performed with sound amplification. There are no records that a Café Dance Permit and/or a Live Entertainment Permit have ever been sought or issued. The addition of live entertainment and dancing substantially changed the restaurant's original operational characteristics and a use permit was required.

On September 16, 2003, the operator filed a use permit application (UP2003-220) to allow the existing establishment to operate as a full-service restaurant and to have a nightclub operation with live entertainment and dancing nightly between the hours of 9:00 p.m. to 2:00 a.m. The application also included a modification of parking requirements because there had been a reduction in on-site parking and the combined total spaces provided on and off-site did not meet code requirements.

On May 6, 2004, the Planning Commission approved a use permit to allow the expansion of the existing restaurant and denied the request to allow the property to operate as a nightclub. The approval allowed the restaurant to increase the occupancy from 133 to 143 persons and to waive three (3) parking spaces.

On May 20, 2004, the applicant appealed the Planning Commission's decision to the City Council, due to the denial of the nightclub portion of the request. After requests for more information and continuance of the item, on August 24, 2004, the City Council denied the appeal and upheld and affirmed the decision of the Planning Commission.

Use Permit No. UP2003-220 was never exercised and subsequently expired; therefore no active use permit exists for this property.

DISCUSSION

Analysis

Consistency with General Plan, Coastal Land Use Plan, and Zoning Code

The subject property is designated as Mixed-Use Water Related (MU-W1) by the Land Use Element of the General Plan, which is applied to waterfront locations along Mariners' Mile Corridor in which marine-related, visitor-serving, commercial, and residential uses are allowed. The proposed project is consistent with this designation as eating and drinking establishments are visitor-serving and commercial uses. The proposed project will also have space for approximately ten (10) boats, available for patrons who choose to take a boat to the restaurant. Furthermore, Land Use Policy LU 6.19.2 (Bay Fronting Properties) encourages marine-related and visitor-serving retail,

restaurant, hotel, institutional, and recreational uses, with some allowance for residential uses.

The Coastal Land Use Plan designates the site as Mixed Use Water Related (MU-W), which is intended to provide for commercial development on or near the bay in a manner that will encourage the continuation of coastal-dependent and coastal-related uses and visitor-serving uses, as well as allow for the development of mixed-use structures with residential uses above the ground floor. The proposed eating and drinking establishment is consistent with this designation.

The Mixed-Use land use designation is implemented by the Mixed Use Water Related (MU-W1) Zoning District. Eating and drinking establishments designated as "Food Service, Late Hours" are allowed with Planning Commission or City Council approval of a conditional use permit. Facilities open to the public past 11:00 p.m. any day of the week are defined by the Zoning Code as establishments with late hours.

Outdoor Dining

The proposed outdoor dining will be located outside of the front entrance facing the parking lot. In addition to acting as an outdoor dining area, the patio will also act as a waiting area for customers waiting to be seated or those picking up to-go orders. The interior net public area proposed is 1,719 square feet, and the Zoning Code allows outdoor dining areas up to 25 percent of the interior net public area without an increase in the parking requirement. Therefore, the applicant has requested an outdoor dining area of 429 square feet (25 percent). The project plans show 480 square feet of outdoor seating area, but should the project be approved, the size would be reduced to 429 square feet or 25 percent of the interior net public area. Because of the existing configuration of the restaurant, the applicant does not think adequate room is available in the corridor for customers to wait for a table. The corridor contains the restrooms and leads to the host stand, bar, and dining area. For this reason, the outdoor dining area is proposed to alleviate potential crowding in the entry corridor. People waiting for a table or to-go orders may be offered beverages while they wait.

Hours of Operation

Pursuant to Section 20.48.090 of the Zoning Code, the Planning Commission must consider the following potential impacts upon adjacent or nearby uses when reviewing an application to allow late-hour operations:

1. *Noise from music, dancing, and voices associated with allowed outdoor uses and activities;*
2. *High levels of lighting and illumination;*

3. *Increased pedestrian and vehicular traffic activity during late and early morning hours;*
4. *Increased trash and recycling collection activities;*
5. *Occupancy loads of the use; and*
6. *Any other factors that may affect adjacent or nearby uses.*

The proposed hours of operation for restaurant dining and delivery are 11:00 a.m. to 2:00 a.m., daily. Possible noise impacts will be diminished because dancing is not proposed, thereby limiting the likelihood the establishment will evolve into a nightclub. Significant noise impacts from the proposed outdoor patio are not anticipated given the proposed location on the north side of the building facing the parking lot and West Coast Highway. The proposed use will not necessitate high levels of lighting or illumination and any outdoor lighting must conform to Zoning Code Section 20.30.070 (Outdoor Lighting). A temporary increase in traffic during late and early morning hours on weekends is expected along West Coast Highway; however, this portion of Coast Highway is a major road, so disturbances on residential streets are not expected to occur.

Should the Planning Commission approve the application, the applicant would be required to obtain an Operator License from the Police Department. The Operator License should provide for enhanced control of noise, loitering, litter, disorderly conduct, parking/circulation, and other potential disturbances resulting from the establishment, and will provide the Police Department with means to modify, suspend, or revoke the operator's ability to maintain late-hour operations.

Because of the distance to the nearest Residential Zoning District, the hours of operation for the restaurant and delivery service should not negatively impact the neighborhood. However, staff recommends a closing time of midnight for the outdoor dining area to diminish potential impacts regarding late night noise to neighbors down the street and above West Coast Highway, and any future mixed-use development.

Live Entertainment

The proposed live entertainment is requested for Saturdays and Sundays only from 2:00 p.m. to 7:00 p.m. The live entertainment will consist of a 2-3 piece group playing background music with amplification. Because of the proposed hours, the design of the restaurant, and the distance to the nearest residential uses, the proposed live entertainment should not be detrimental to the community. The restricted days and hours will prevent any potential late night impacts that could occur and will limit the possibility of the establishment having a nightclub atmosphere. Moreover, dancing is not proposed with this application. Approval of this Conditional Use Permit would not permit the establishment to operate as a bar, tavern, cocktail lounge, or nightclub, as

defined by the Municipal Code, despite the live entertainment and late operating hours. The interior dining area and bar are situated towards the water side of the property, and there is no patio along the water that would allow sounds to carry across the Lido Channel. A condition of approval has been included requiring the exterior windows to be maintained in the closed position after 11:00 p.m., daily. Although the Zoning does allow for mixed-use properties, there are not any occupied residential dwelling units in the vicinity. The property owner of the mixed-use structure to the east of the subject property has not expressed any concerns over the proposed use.

Alcohol Sales

When reviewing an application to allow an eating or drinking establishment to sell, serve, or give away alcohol, Section 20.48.090 (Eating and Drinking Establishments) of the Zoning Code requires the Planning Commission to evaluate the potential impacts upon adjacent uses (within 100 feet as measured between the nearest lot lines) and to consider the proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption. The adjacent uses are food service, retail sales, and general commercial uses, which are compatible with the proposed restaurant.

In order to approve a use permit for alcohol sales, the Planning Commission must also find that the use is consistent with the purpose and intent of Section 20.48.030 (Alcohol Sales). In doing so, the follow must be considered:

- a) The crime rate in the reporting district and adjacent reporting districts as compared to other areas in the City.
- b) The numbers of alcohol-related calls for service, crimes, or arrests in the reporting district and in adjacent reporting districts.
- c) The proximity of the establishment to residential zoning districts, day care centers, hospitals, park and recreation facilities, places of worship, schools, other similar uses, and any uses that attract minors.
- d) The proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption.
- e) Whether or not the proposed amendment will resolve any current objectionable conditions.

Input has been provided by the Police Department, which has reviewed the application and does not object to the operations as proposed by the applicant. All crime rate data discussed below is from 2009. The subject property is located within Reporting District (RD) 25, which includes Mariners' Mile between Tustin Avenue and Old Newport Boulevard, and Newport Heights. Refer to Attachment No. PC 5 for a map of the Reporting Districts and the comments from the Police Department.

- d) The proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption.

Reporting District	Active ABC Licenses	Per Capita License Ratio
25	21	1 per 139 residents
24	9	1 per 556 residents
16	6	1 per 464 residents
County-wide	5,589	1 per 542 residents

The table above represents the number of active ABC licenses for RD 25, RD 24, RD 16, and the County of Orange. RD 25 has a greater number of licenses and per capita ratio than RD 24 and RD 16. The portion of Mariners' Mile where the subject property is located contains several other restaurants, which may explain the higher number of licenses. Other establishments in the area include Rolf's Wine, Joe's Crab Shack, Billy's at the Beach, Garlic Jo's, Jack Shrimp, China Palace, Villa Nova, Chart House, and the Rusty Pelican. A retail wine store is located across the street on the corner of Tustin Avenue and West Coast Highway.

- e) Whether or not the proposed amendment will resolve any current objectionable conditions.

There are no current objectionable conditions at the subject property. While the property has had some enforcement issues in the past, the proposed use is substantially different than previous uses, notably that no dancing is proposed and live entertainment would be limited to Saturdays and Sundays from 2:00 p.m. to 7:00 p.m. The proposed Conditional Use Permit will re-establish a restaurant use in a vacant building that has been inactive for years. Approval of this application will necessitate the operator to obtain an Operator License pursuant to Chapter 5.25 of the Municipal Code, issued by the Chief of Police.

Parking Requirement

The Zoning Code requires one (1) parking space for every 30-50 square feet of net public area, so the requirement is between 35 and 58 parking spaces. The applicant is supplying 12 on-site parking spaces and 20 off-site parking spaces; therefore, there will be a deficiency of between 3 and 26 parking spaces. Based on the operational characteristics and design of the establishment, staff is recommending a parking requirement of one (1) parking space for every 40 square feet of net public area. The proposed net public area is 1,719 square feet requiring 43 parking spaces leading to a parking waiver of eleven (11) parking spaces.

Section 20.40.060 (Parking Requirements for Food Service Uses) sets guidelines for establishing parking requirements. The following information on the design

characteristics, operational characteristics, and location of the establishment were used to determine the staff recommended (1/40) parking requirement. The applicant is making the dock slips available for public parking, increasing the amount of parking available for the use and promoting the water-related use encouraged in Mariners' Mile. The outdoor dining is limited to less than 25 percent of the interior net public area. The amount of floor area devoted to live entertainment is small, and no dancing is proposed. The establishment will have some television screens, but no pool tables or other attractions are proposed. The applicant proposes to provide high end barbeque that will most likely lead to a low turnover rate. There are other nearby uses that will lead to some walk-in trade. Off-site parking and valet is addressed in the draft Parking Management Plan (Attachment No. PC 3).

The Public Works Department reviewed the application and recommends that the proposed project provide all code-required parking as determined by the Planning Division at the on-site and secured off-site locations. This would mean the applicant would need to provide 11 additional parking spaces at a secured off-site location. Additionally, General Plan Land Use Element Policy LU 6.19.5 (Parking) states, "Require adequate parking and other supporting facilities for charters, yacht sales, visitor-serving, and other waterfront uses." However, staff believes that through the Parking Management Program that includes active parking lot management through valet operations, negative impacts from a reduction of on-site parking spaces can be reduced.

Parking Management Plan

A parking management plan is necessary to mitigate impacts associated with a reduction in the number of required parking spaces. The draft Parking Management Plan (Attachment No. PC 3) includes a requirement for off-site parking and valet operations. The applicant proposes to lease 20 parking spaces from the owner of the parking lot located at 2615 Avon Street. The draft Parking Management Plan requires that any change in the terms of the lease that would affect the 20 secured parking spaces be reviewed by the Community Development Director. The off-site parking lot is less than 500 feet away from the subject property. The lot contains 122 parking spaces and serves the uses located at 2700 West Coast Highway, which is developed with a 36,000-square-foot commercial building with 22 on-site parking spaces. This commercial building houses office and retail uses and no eating and drinking establishments. All 144 spaces are required for the uses at 2700 West Coast Highway. Staff conducted a parking survey of the off-site lot counting the number of cars parked in the lot at various times throughout the week. Survey times included peak lunch and dinner hours. The results demonstrate that the highest occupancy was 67 cars on a Thursday between noon and 1:00 p.m. The average number of cars counted throughout the two week survey was 40 (33 percent occupied).

While staff does not want to encourage the use of public parking for private use, Mariners' Mile does contain on-street parking and a municipal lot near the subject

property. The applicant included information on the metered and unmetered parking in the parking management plan submitted with the application (Attachment No. PC 2). Some of this information was incorporated into the draft Parking Management Plan. The parking survey conducted by staff also included a one (1) week survey of 91 nearby public parking spaces. Most of the spaces are metered and unmetered street parking, but 16 are located within a municipal parking lot near the Tustin Avenue and Avon Street intersection. The highest number of cars was counted on a Saturday night between 8:00 p.m. and 9:00 p.m. where 73 cars were parked within the 91 available spaces. The average number of cars counted throughout the survey period was 49 (53 percent occupied).

The parking survey demonstrated that parking is available in the off-site parking lot and in nearby public parking spaces. Furthermore, the parking study conducted in 2009 by Walker Parking Consultants concluded that overall the Mariners' Mile area does not have a parking shortage. The draft Parking Management Plan will ensure that off-site parking is available for the use and that valet operations eliminate any congestion that could occur in the area due to the restaurant operations. If the valet operations are insufficient to meet the needs of the proposed use, then the valet plan and Parking Management Plan will need to be modified and reviewed by the City Traffic Engineer and Community Development Director.

The valet service will be in operation during the busiest times for the restaurant. Valet attendants will be stationed in the middle of the on-site parking lot to avoid backup onto West Coast Highway. Valet attendants will be stationed at the subject property and at the off-site lot.

Economic Development

The Economic Development staff reviewed the application and supported the proposed Dry Dock project and hoped the Planning Commission would make every reasonable effort to approve the request. Economic Development staff agreed with the applicant's statement that special consideration of the site's parking deficiencies should be granted, given that the conditions of the site and operations have not changed significantly from previous restaurant operations in this location. Finally, staff believed that the restaurant's location in the heart of a commercial area along Coast Highway is appropriate for an operation with extended hours of operation and live entertainment.

Required Findings

Section 20.52.020 (F) (Conditional Use Permits and Minor Use Permits), Section 20.40.100 (B) (Off-Site Parking), and Section 20.48.030 (C) (Alcohol Sales) of the Zoning Code require certain findings to be made in order to approve the project. In order to grant approval of the Conditional Use Permit, the Planning Commission must make each of the following findings:

1. *The use is consistent with the General Plan and any applicable specific plan;*
2. *The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code;*
3. *The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity;*
4. *The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities; and*
5. *Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*
6. *The proposed use is consistent with the purpose and intent of Section 20.48.030 (Alcohol Sales).*
7. *The parking facility is located within a convenient distance to the use it is intended to serve.*
8. *On-street parking is not being counted towards meeting parking requirements.*
9. *Use of the parking facility will not create undue traffic hazards or impacts in the surrounding area.*
10. *The parking facility will be permanently available, marked, and maintained for the use it is intended to serve.*

Staff believes that findings for approval can be made, and facts in support of the required findings are included in the draft resolution (Attachment No. PC 1). The operation of a "Food Service, Late Hours" use with alcohol sales is consistent with the purpose and intent of the Mixed-Use Water Related (MU-W1) designation of the General Plan and Zoning Code. The use is compatible with the neighborhood because the Mariners' Mile area is an established commercial area with several similar uses nearby. The existing site is located on a major road and has been utilized for restaurant uses since 1968. It should be noted that this area may see future residential development based upon the recently applied mixed use land use designation. Those projects could only be developed on lots that are a minimum of 200 feet wide; therefore, it is unlikely that such a project would abut the project site given that the lot width of abutting sites is less than 200 feet.

The applicant proposes an emphasis on upscale delivery that will specialize in items that travel well, such as baby back ribs. The delivery vehicle will load and unload on site and will not be parked in the public right-of-way. Conditions of approval related to standard operations for eating and drinking establishments have been included for the overall operations of the proposed restaurant. Conditions are included related to on-sale alcoholic beverage activities, including training of personnel who sell or serve alcoholic beverages. Adequate parking is maintained and provided by valet service in conformance with the draft Parking Management Plan. Potential noise impacts will be diminished because live entertainment is not proposed during late hours or on weekdays and dancing is not proposed. Staff recommended a condition of approval requiring the Conditional Use Permit to be reviewed by the Planning Commission within one (1) year of the restaurant being in operation in order to monitor the parking and restaurant operations and to ensure that the use has not been detrimental to the community.

The Police Department indicates it has no objections to the applicant's request. The ABC License will be conditioned appropriately to protect the health, safety, and welfare of the community. To ensure the proposed use does not create a detrimental impact during late hours, the applicant (and any future operators of the existing eating and drinking establishment) will be required to obtain an Operator License issued by the Chief of Police pursuant to Chapter 5.25 of the Municipal Code. Additionally, the applicant will be required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance, should they occur, to areas surrounding the restaurant and adjacent properties during business hours. If the operator is unable to abide by the conditions of approval, or prevent objectionable conditions from occurring, the Police Department will have the authority to modify, suspend, or revoke the operator's ability to maintain late-hour operations, or require other corrective measures. The Police Department provided alcohol related crime statistics that help to demonstrate that the project should not prove to be a detriment.

The off-site parking lot is located within 500 feet of the subject property. Employees who drive to work will be required to park in the off-site parking lot. Use of the lot will not create undo traffic hazards because most patrons will be able to utilize the valet service and the valet plan will be reviewed and approved by the City Traffic Engineer. The leased parking spaces will be clearly marked so that the valet service employees and restaurant patrons will know which spaces are available for the restaurant use at the subject property.

Summary

The subject property and structure have historically been uses as a restaurant. The applicant proposes minor alterations to the property with the floor plan remaining generally unchanged. Conditional Use Permit approval is required for the restaurant operation and must address the restaurant use, late hours, alcohol sales, live entertainment, outdoor dining, delivery operation, and parking. The proposed project is

Correspondence
Item No. 3c
Dry Dock Restaurant
PA2011-005



1040 North Tustin Avenue, Anaheim, CA 92807 (800) 842-0221
www.maxxess-systems.com

Dear Chairman McDaniel and members of the Planning Commission:

We are, as signers of this letter, directly and negatively affected by the above application and, perhaps more importantly, by the intended conduct the application, as presently constituted, contemplates. We all live directly across the bay from this property and all of us are in extremely close acoustic range to noise, lighting, and other nuisance-related impacts that the granting of the application will surely cause.

We do not think that sufficient research has been completed to determine these impacts; page 6 of the staff report reflects, for example:

Because of the distance to the nearest Residential Zoning District, the hours of operation for the restaurant and delivery service should not negatively impact the neighborhood. However, staff recommends a closing time of midnight for the outdoor dining area to diminish potential impacts regarding late night noise to neighbors down the street and above West Coast Highway, and any future mixed-use development.

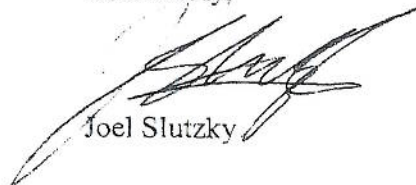
We do not think that the City Staff nor any other representatives have taken any noise measurements to objectively determine the likely impact to us, and the staff report's omission of that evidence and lack of reference to that bears this point out, we think.

There is significant precedent for this problem; a prior applicant in very close proximity, Windows on the Bay, attempted the same application. The City preformed noise studies and ultimately determined that the impact to the across-the-bay neighbors was so great that the application should be denied.

What is particularly egregious, though, is that we got almost no notice (48 hours by postcard on Baker and still no postcard for Slutzky) of the meeting. We request ample time to prepare a proper opposition and to advise the affected neighbors.

For all of these reasons, we respectfully request that you postpone the application's hearing in order that we may be allowed to organize our evidence and testimony and properly appear and present it to you. We thank you for your consideration and look forward to discussing the matter with you in a businesslike, prepared manner.

Yours truly,



Joel Slutzky



Bob Baker

Nueno, Fern

From: Barry Eaton [eaton727@earthlink.net]
Sent: Saturday, June 04, 2011 10:02 PM
To: Nueno, Fern
Cc: Ramirez, Gregg; Campbell, James; Brine, Tony
Subject: Proposed Dry Dock Restaurant/Bar

Fern,

I have now read all 69 pages of this staff report and attachments, and I do have a few questions:

- 1) On page 3 of the staff report, you note that 80 seats are proposed; on page 4, you note that the previous occupancy of Josh Slocums was a total of 144 persons; on page 6, you note that "Occupancy loads of the use" is one of the standards we must consider when judging the impacts of the proposed late night hours; and on page 11 of the proposed Resolution, Condition no. 42 states that "Strict adherence to the occupancy limits is required." But I can't find the new proposed occupancy limits anywhere in the staff report or attachments. As a late night operation, I suspect that, if popular, the occupancy will be considerably in excess of the seating, as it was for Josh Slocums. What are the occupancy limits of the redesigned inside restaurant and the newly proposed patio?
- 2) Whatever those occupancy limits are, were they taken into account when you recommended (on page 9 of the staff report) the median parking ratio one one space/40 sq. ft. of net public area (within the 30 - 50 square feet per parking space range in the code), and an "adjustment" to the required parking, rather than a ratio more closely resembling a use likely to attract standing room crowds?
- 3) On page 7 of the staff report, you state that the Police Department "...does not object to the operations as proposed by the applicant." But there is no memo to that effect attached to the staff report. Is there such a memo? If so, could you forward it to us?
- 4) On page 10 of the staff report, you note that the Public Works Department "...recommends that the project provide all code-required parking..."; but it appears that Planning is recommending the "adjustment", so that the requirement is not fully met. Does that mean that the departments have different views of this issue, or have I misread this?
- 5) On page 11 of the staff report, you note that the proposed valet service would be available during the busiest times for the restaurant. But the valet service would be available only after 6:00 PM, according to the Parking Management Plan (hand numbered page 43); and the proposed Live Entertainment aspect of the application would include the hours of 2:00 - 6:00 PM on Saturdays and Sundays. Have you assumed that the restaurant would not be at its busiest when live entertainment is proposed, or that off site street and/or parking lot space would be more available, or is there some other rationale that eludes me?

6) On the first page of the proposed Resolution, item no. 3 states as a "Fact" that the parking requirement ratio is one space/40 square feet. Is this not a conclusion (that should be affirmed by the Commission), rather than a "fact"? Isn't it more appropriately covered by Finding B-3 on page 3 of the proposed Resolution?

7) On page 8 of the proposed Resolution, proposed Condition no. 10 requires that "Noise from the live entertainment shall be confined to the interior of the structure." Does that mean that they could not open their windows on Saturday or Sunday afternoons (even in the summer), when providing live entertainment?

8) The applicant states (on hand numbered page 35) that he intends to have 4 delivery vans in use at the site. Is there enough loading zone area to accommodate 4 vans?

Thank you very much for your consideration of these questions. I look forward to your response.

Barry

Correspondence
Item No. 3c
Dry Dock Restaurant
PA2011-005



1040 North Tustin Avenue, Anaheim, CA 92807 (800) 842-0221
www.maxxess-systems.com

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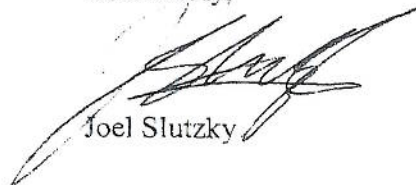
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Yours truly,



Joel Slutzky



Bob Baker

TO: Fern Nueno, Assistant Planner
RE: Dry Dock Restaurant - PA2011-005

1. Re Condition 14. Applicant states a lease will be entered into between it and Ned McCune. Is Mr. McCune the fee owner? If so, has he agreed that the document can be recorded? If it is to be a sublease, has the fee owner consented to recordation?
2. Re page 12, eight lines from bottom. The owner of 2700 West Coast Highway is required to maintain 144 parking spaces under its current CUP. Must that CUP be amended to allow 20 of those spaces to be allocated to the exclusive use of an unrelated property, thus reducing its available parking by 20 spaces?
3. Re Condition 21. Has an irrevocable offer of dedication or an easement document been submitted that is acceptable to both the fee owner and the City? Can you make the location and scope of this easement available at the PC meeting?
4. Re Parking Plan. How does the Parking Plan address the situation in which all 12 on-site parking spaces are occupied, the valet line is full, and four Delivery Trucks are in the process of being loaded for delivery?
5. Re Parking Plan. Because selling food for off-site consumption is a big part of Applicant's business plan will there be a special short-term parking area for patrons who pick up their food to go such as China Palace has?
6. Parking. If all employees park at the off-site location this leaves only nine spaces for self-parking and valet. Is this adequate?
7. Re page 14, item 8. Applicant's submission indicates that it is relying heavily upon on-street parking (see page 43). How then does the City make this finding?
8. Re Conditions 10 and 53. If Applicant is in compliance with Condition 53 during "live entertainment" would Applicant be in violation of Condition 10 which apparently allows no noise to escape the interior?
9. Are the exterior windows facing the bay the best type of window for sound attenuation?

10. Will a fire sprinkler system be required for the entire restaurant?
11. Re Condition 40. Does delivery food count towards the 50%?
12. Re page 15, last four lines of first paragraph. Should language read, "within one (1) year and every two (2) years thereafter..."?
13. Re Page 15, next to last sentence of second paragraph. Has city attorney opined that the Operating Permit will not give the police chief jurisdiction to impose remedies that would affect Applicant's operations prior to 11:00 p.m.?